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Citizenship and Immigration Services

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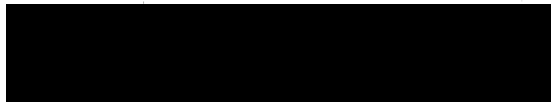
ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, D.C. 20536



File: WAC 02 141 51411 Office: California Service Center

Date: **FEB 10 2004**

IN RE: Petitioner:
Beneficiary:



Petition: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:



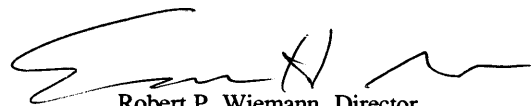
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based preference visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a sheet metal company. It seeks to employ the beneficiary permanently in the United States as a punch press setter. The Application for Alien Employment Certification (Form ETA 750), filed with the Department of Labor on January 16, 1998, indicates that the minimum requirement to perform the job duties of the proffered position is two years of experience in the job offered. As required by statute, the petition is accompanied by an individual labor certification approved by the Department of Labor. The director determined that the petitioner had not established that the beneficiary had the requisite experience as of the petition's priority date.

On appeal, counsel submits a letter of explanation and copies of documentation previously submitted.

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

The regulation at 8 C.F.R. § 204.5(1)(3) states, in pertinent part:

(ii) *Other documentation* -- (A) *General*. Any requirements of training or experience for skilled workers, professionals, or other workers must be supported by letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien.

(B) *Skilled workers*. If the petition is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification, meets the requirements for Schedule A designation, or meets the requirements for the Labor Market Information Pilot Program occupational designation. The minimum requirements for this classification are at least two years of training or experience.

The issue to be considered in this proceeding is whether the beneficiary has the experience specified on the labor certification as of the petition's priority date. *Matter of Wing's Tea House, supra.* Here, the petition's priority date is January 16, 1998.

With the petition, counsel submitted an ETA 750 indicating the proffered position required two years of experience as a punch press setter. Counsel also submitted a letter from [REDACTED] of Acapulco, Mexico, stating that from May 1990 to June 1992 they had employed the beneficiary as a punch press setter. Counsel requested that the ETA 750 be amended to reflect the beneficiary's experience with [REDACTED] rather than with [REDACTED] as shown on the approved labor certification.

In a request for evidence, dated June 4, 2002, the director requested evidence that the beneficiary possessed the experience listed on the Form ETA 750. The director requested an explanation as to why the beneficiary did not list his work experience with [REDACTED] on the ETA 750. The director noted that the ETA 750 indicated that the beneficiary had worked for [REDACTED] in Mexico from July 1989 to October 1992.

In response, counsel stated in a letter that the information regarding employment with Metales Del Sur had been submitted in error, and that the letter from [REDACTED] correctly reflected the beneficiary's experience.

The director determined that the petitioner had not shown that the beneficiary possessed the requisite experience in the job offered.

On appeal, counsel re-submits the letter of employment from [REDACTED] and argues that "[t]he ETA 750 B reflected experience that does not belong to the beneficiary."

The record contains two letters from 1999 to the Employment Development Department, Alien Labor Certification Office, Sacramento, California, under counsel's letterhead. The first letter, dated June 29, 1999, and signed by the petitioner, the beneficiary, and counsel, requests correction of the labor certification application and states that the beneficiary worked for Metales Del Sur from July 1989 to October 1992 as a punch press setter. The second letter, dated August 20, 1999, and signed by the beneficiary and counsel, reiterates that the beneficiary worked for Metales Del Sur from July 1989 to October 1992. The record reflects that these corrections of dates of employment with Metales Del Sur were made.

Obviously, the 1999 letters to the Department of Labor, and the

later assertions of counsel and the beneficiary regarding the beneficiary's foreign experience are in conflict. Furthermore, counsel's explanation on appeal is inadequate to resolve these discrepancies. The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

At least three letters in the file, one of which was co-signed by the petitioner, indicate that the beneficiary has been working for the petitioner since November of 1994 as a fulltime punch press setter. However, no other evidence has been submitted to establish this assertion such as pay records. Given the discrepancies noted above, serious doubt is cast on the reliability of this evidence. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho, supra*. Therefore, the petitioner has not overcome the decision of the director.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.